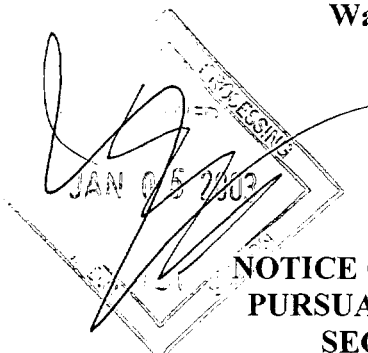


UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549



FORM D

NOTICE OF SALE OF SECURITIES  
PURSUANT TO REGULATION D,  
SECTION 4(6), AND/OR  
UNIFORM LIMITED OFFERING EXEMPTION

1275318

O
OMP
Expi
Estimated average hours per response... 16

04000035

SEC USE ONLY		
Prefix		Serial
DATE RECEIVED		

Name of Offering (check if this is an amendment and name has changed, and indicate change.)

**\$600,000 Offering of Stock Representing Membership Interests in Bwana Gear, LLC**

Filing Under (Check box(es) that apply): ☒ Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE

Type of Filing: ☒ New Filing ☐ Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (check if this is an amendment and name has changed, and indicate change.)

**Bwana Gear, LLC**

Address of Executive Offices (Number and Street, City, State, Zip Code)

**Bwana Gear, LLC  
820 Spyderco Way  
Golden, CO 80403**

Telephone Number (Including Area Code): 866-222-9262

Address of Principal Business Operations (Number and Street, City, State, Zip Code)

**Same as Executive Offices**

Telephone Number (Including Area Code): **Same as Executive Offices**  
(if different from Executive Offices)

Brief Description of Business: **Design, manufacture, distribution, and sale of air-cushioned protective cases.**

**PROCESSED**  
**JAN 06 2004**  
**THOMSON FINANCIAL**

RECD S.E.C.
JAN - 5 2004
1066

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Type of Business Organization

☐ corporation                      ☐ limited partnership, already formed                      ☒ other (please specify):  
☐ business trust                      ☐ limited partnership, to be formed                      **limited liability company**

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Month      Year

Actual or Estimated Date of Incorporation or Organization: **July      2003**                      ☒ Actual    ☐ Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State:  
**CO**

CN for Canada; FN for other foreign jurisdiction)

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**GENERAL INSTRUCTIONS**

**Federal:**

*Who Must File:* All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

*When to File:* A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

*Where to File:* U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

*Copies Required:* Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of manually signed copy or bear typed or printed signatures.

*Information Required:* A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

*Filing Fee:* There is no federal filing fee.

**State:**

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix in the notice constitutes a part of this notice and must be completed.

**ATTENTION**

**Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.**

**SEC 1972 Potential persons who are to respond to the collection of information (6/02) contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

**A. BASIC IDENTIFICATION DATA**

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Full Name (Last name first, if individual) : **Schuster, Michael Louis**

Business or Residence Address (Number and Street, City, State, Zip Code):

**11404 Chase Way  
Westminster, CO 80020**

Check Box(es) that Apply: ☒ Promoter ☒ Beneficial Owner ☒ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual): **Schuster, James Ray**

Business or Residence Address (Number and Street, City, State, Zip Code)

**6986 N. Orchard Ct.  
Arvada, CO 80007**

Check Box(es) that Apply: ☒ Promoter ☒ Beneficial Owner ☒ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual): **Theodore J. Izzo**

Business or Residence Address (Number and Street, City, State, Zip Code)

**6490 S. Kinney Creek Rd  
Evergreen, CO 80439**

Check Box(es) that Apply: ☒ Promoter ☒ Beneficial Owner ☒ Executive Officer ☒ Director ☐ General and/or Managing Partner

### B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering?..... Yes No  
[ X ] [ ]

Answer also in Appendix, Column 2, if filing under ULOE.

2. What is the minimum investment that will be accepted from any individual?..... \$12,500

3. Does the offering permit joint ownership of a single unit?..... Yes No  
[ X ] [ ]

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual): N/A

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer: N/A

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers: N/A

(Check "All States" or check individual States) ..... [ ] All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]  
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]  
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]  
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [WA] [WV] [WI] [WY] [PR]

Full Name (Last name first, if individual): N/A

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer: N/A

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers: N/A

(Check "All States" or check individual States) .....

☐ All States

[AL]	[AK]	[AZ]	[AR]	[CA]	[CO]	[CT]	[DE]	[DC]	[FL]	[GA]	[HI]	[ID]
[IL]	[IN]	[IA]	[KS]	[KY]	[LA]	[ME]	[MD]	[MA]	[MI]	[MN]	[MS]	[MO]
[MT]	[NE]	[NV]	[NH]	[NJ]	[NM]	[NY]	[NC]	[ND]	[OH]	[OK]	[OR]	[PA]
[RI]	[SC]	[SD]	[TN]	[TX]	[UT]	[VT]	[VA]	[WA]	[WV]	[WI]	[WY]	[PR]

Full Name (Last name first, if individual): N/A

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer: N/A

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers: N/A

(Check "All States" or check individual States) .....

☐ All States

[AL]	[AK]	[AZ]	[AR]	[CA]	[CO]	[CT]	[DE]	[DC]	[FL]	[GA]	[HI]	[ID]
[IL]	[IN]	[IA]	[KS]	[KY]	[LA]	[ME]	[MD]	[MA]	[MI]	[MN]	[MS]	[MO]
[MT]	[NE]	[NV]	[NH]	[NJ]	[NM]	[NY]	[NC]	[ND]	[OH]	[OK]	[OR]	[PA]
[RI]	[SC]	[SD]	[TN]	[TX]	[UT]	[VT]	[VA]	[WA]	[WV]	[WI]	[WY]	[PR]

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

### C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero." If the transaction is an exchange offering, check this box ☐ and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt .....	\$0	\$0
Equity .....	\$0	\$0
<input type="checkbox"/> Common <input type="checkbox"/> Preferred		
Convertible Securities (including warrants) .....	\$0	\$0
Partnership Interests .....	\$0	\$0
Other (Specify: Equity Membership Interests) .....	\$600,000	\$162,500.00
Total .....	\$600,000	\$162,500.00

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors .....	6	\$100,000
Non-accredited Investors .....	4	\$ 62,500
Total (for filings under Rule 504 only) .....	10	\$ 162,500

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C-Question 1.

Type of offering	Type of Security	Dollar Amount Sold
Rule 505 .....	_____	\$ _____
Regulation A .....	_____	\$ _____
Rule 504 .....	Other: Equity Membership Interests	\$138,000
	Convertible Securities	\$100,000
Total .....	_____	\$238,000

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees .....	<input type="checkbox"/> \$0
Printing and Engraving Costs .....	<input type="checkbox"/> \$0
Legal Fees .....	<input checked="" type="checkbox"/> \$3,000
Accounting Fees .....	<input type="checkbox"/> \$0
Engineering Fees .....	<input type="checkbox"/> \$0
Sales Commissions (specify finders' fees separately) .....	<input type="checkbox"/> \$0
Other Expenses (identify) .....	<input type="checkbox"/> \$0
Total .....	<input checked="" type="checkbox"/> \$

b. Enter the difference between the aggregate offering price given in response to Part C - Question 1 and total expenses furnished in response to Part C - Question 4.a. This difference is the "adjusted gross proceeds to the issuer." ..... \$597,000

5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C - Question 4.b above.

	Payments to Officers, Directors, & Affiliates	Payments To Others
Salaries and fees .....	[X] 72,000	[X] 32,000
Purchase of real estate .....	[ ] \$0	[ ] \$0
Purchase, rental or leasing and installation of machinery and equipment .....	[ ] \$0	[X] \$62,000
Construction or leasing of plant buildings and facilities.....	[ ] \$0	[ ] \$0
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger) .....	[ ] \$0	[ ] \$0
Repayment of indebtedness .....	[X] \$30,000	[ ] \$0
Working capital .....	[ ] \$0	[X] 401,000
Other (specify): .....	[ ] \$0	[ ] \$0
.....	[ ] \$0	[ ] \$0
Column Totals .....	[X] \$102,00	[X] \$495,000
Total Payments Listed (column totals added) .....	[X] \$597,000	

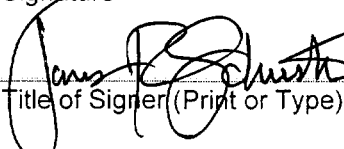
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#### D. FEDERAL SIGNATURE

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The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

---

Issuer (Print or Type)	Signature	Date
Bwana Gear, LLC		12/29/03
Name of Signer (Print or Type)	Title of Signer (Print or Type)	
James R. Schuster	President	

<b>ATTENTION</b>
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Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)
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### E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule?

Yes No  
[ ] [X]


.....  
See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed, a notice on Form D (17 CFR 239.500) at such times as required by state law.

3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.

4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type)	Signature	Date
Bwana Gear, LLC		12/29/03
Name of Signer (Print or Type)	Title of Signer (Print or Type)	
James R. Schuster	President	

*Instruction:*

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

# APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
AL		X	None	ZERO	N/A	ZERO	N/A		X
AK		X	None	ZERO	N/A	ZERO	N/A		X
AZ		X	None	ZERO	N/A	ZERO	N/A		X
AR		X	None	ZERO	N/A	ZERO	N/A		X
CA		X	None	ZERO	N/A	ZERO	N/A		X
CO	X		Equity Membership Interests (\$400,000)	5	\$75,000	2	\$37,500		X
CT		X	None	ZERO	N/A	ZERO	N/A		X
DE		X	None	ZERO	N/A	ZERO	N/A		X
DC		X	None	ZERO	N/A	ZERO	N/A		X
FL		X	None	ZERO	N/A	ZERO	N/A		X
GA		X	None	ZERO	N/A	ZERO	N/A		X
HI		X	None	ZERO	N/A	ZERO	N/A		X
ID		X	None	ZERO	N/A	ZERO	N/A		X
IL		X	None	ZERO	N/A	ZERO	N/A		X
IN		X	None	ZERO	N/A	ZERO	N/A		X
IA		X	None	ZERO	N/A	ZERO	N/A		X
KS		X	None	ZERO	N/A	ZERO	N/A		X
KY		X	None	ZERO	N/A	ZERO	N/A		X
LA		X	None	ZERO	N/A	ZERO	N/A		X
ME		X	None	ZERO	N/A	ZERO	N/A		X
MD		X	None	ZERO	N/A	ZERO	N/A		X
MA		X	None	ZERO	N/A	ZERO	N/A		X
MI		X	Equity Membership Interests (\$400,000)	1	\$25,000	ZERO	N/A		X
MN		X	None	ZERO	N/A	ZERO	N/A		X

MS		X	None	ZERO	N/A	ZERO	N/A		X
MO		X	None	ZERO	N/A	ZERO	N/A		X
MT		X	None	ZERO	N/A	ZERO	N/A		X
NE		X	None	ZERO	N/A	ZERO	N/A		X
NV		X	None	ZERO	N/A	ZERO	N/A		X
NH		X	None	ZERO	N/A	ZERO	N/A		X
NJ		X	None	ZERO	N/A	ZERO	N/A		X
NM		X	Equity Membership Interests (\$400,000)	ZERO	N/A	ZERO	N/A		X
NY		X	None	ZERO	N/A	ZERO	N/A		X
NC	X		Equity Membership Interests (\$400,000)	ZERO	N/A	2	\$25,000		X
ND		X	None	ZERO	N/A	ZERO	N/A		X
OH		X	None	ZERO	N/A	ZERO	N/A		X
OK		X	None	ZERO	N/A	ZERO	N/A		X
OR		X	None	ZERO	N/A	ZERO	N/A		X
PA		X	None	ZERO	N/A	ZERO	N/A		X
RI		X	None	ZERO	N/A	ZERO	N/A		X
SC		X	None	ZERO	N/A	ZERO	N/A		X
SD		X	None	ZERO	N/A	ZERO	N/A		X
TN		X	None	ZERO	N/A	ZERO	N/A		X
TX		X	None	ZERO	N/A	ZERO	N/A		X
UT		X	None	ZERO	N/A	ZERO	N/A		X
VT		X	None	ZERO	N/A	ZERO	N/A		X
VA		X	None	ZERO	N/A	ZERO	N/A		X
WA		X	None	ZERO	N/A	ZERO	N/A		X
WV		X	None	ZERO	N/A	ZERO	N/A		X
WI		X	None	ZERO	N/A	ZERO	N/A		X
WY		X	None	ZERO	N/A	ZERO	N/A		X
PR		X	None	ZERO	N/A	ZERO	N/A		X

My comments:

1. New ¶ on page 1: redundant with other language, but no problem - OK to leave in.
2. ¶2: As previously mentioned, I'll need to rely on you for everything related to the NYMEX Adjustment.
3. ¶3: Fine
4. ¶7: This is a pure business issue. IE's change matters only if there are some Customers not on a calendar month billing cycle (if all Customers are on a calendar month billing cycle, then there is no issue - IE's change is fine). For example, take a Customer who's on a Jan 20-Feb 19 billing cycle. The way I had drafted the LOI, that Customer would not get an interim partial month billing - e prime would transfer billing data for the last 12 days in January for that Customer to IE; IE would include that data in its bill to the Customer for Jan 20-Feb 19; and the parties would split the money appropriately when the Customer paid the bill. I interpret IE's change to this ¶7 to require e prime to send to the Customer an interim bill for Jan 20-Jan 31, and IE would send the same Customer a bill for Feb 1 - Feb 19 - or maybe IE would change the Customer's billing cycle entirely. I don't care about this - IE's proposal actually might make more sense, so we can get that Customer to send us the \$ for Jan 20-31 directly, without having to chase IE for the money.
5. ¶8: Another pure business issue. Suppose a Customer in financial difficulty sends to IE in March a check for \$1,000 "on account," to keep its gas flowing, where the Customer owes e prime \$5,000 for gas delivered in January and \$7,000 to IE for gas delivered in February. Who gets to keep the \$1,000? My language said e prime ("FIFO" A/R accounting), IE has changed the language so that IE would get the money in that situation ("LIFO" A/R). A compromise, especially if the parties cut off their billings as of February 1 per IE's change to ¶7 (see my item 4 above), would be simply to have the parties responsible for collecting their own unpaid A/R, with each party essentially keeping the money sent by the Customer to that party (to the extent that a check doesn't reference or otherwise tie to a particular invoice). If you want to do that, you can simply delete the whole last sentence of ¶7.
6. ¶10: Fine - as discussed with Tim. It's a bit unusual to pay severance when a successor business takes over, but there's nothing wrong with that, and maybe Xcel policies require it?
7. ¶11: This appears benign, but you **MUST** clear this ¶ with Xcel superiors at a very high level, since (i) it now applies to the entire group of Xcel companies (I tried to be clever and limit it to e prime-Florida), and (ii) it now includes a general non-compete in the State of Florida, not just non-solicitation of existing customers. Any non-compete has strategic implications - for example, signing this could prevent Xcel from merging with Florida Power for five years. Trust me, you don't want to be the guy who throws a monkey wrench into Xcel's strategic plans. While IE's requested change here seems reasonable, it could be a deal-killer.
8. Second ¶4 (old ¶d): Non-Solicitation (if the deal falls through): This is ultimately a business issue, but I'd say **NO** to all of IE's changes here, especially its changes to ¶'s (iii) and (iv). If this deal falls through, we don't want IE soliciting our Customer list for a

long time, after giving IE access to our customer data - allowing IE to solicit our customers beginning in 2005 could hurt your chances of selling e prime-FL's book to another buyer later this year, if the IE deal falls apart for some reason. Note that ironically, IE wants a five-year non-solicitation and non-compete from us if the deal closes, but offers to us only a one-year non-solicitation if the deal falls apart.

That's it. I'm gone for the rest of today, back in tomorrow a.m.

-----Original Message-----

**From:** Brubaker, Holly [mailto:Holly.Brubaker@eprime.com]  
**Sent:** Tuesday, December 30, 2003 11:49 AM  
**To:** Robert Montgomery  
**Cc:** Kawakami, Tim  
**Subject:** FW: Infinite Energy - e' Florida LOI

Bob,

Tim asked me to forward this for your review asap. Do the changes in number 8 accounts receivable make sense to you? Thanks.

Holly Brubaker  
Director of Retail  
e prime Florida, Inc.  
727-363-1617  
Fax: 727-363-7637

-----Original Message-----

**From:** Rich Blaser [mailto:RBlaser@INFINITEENERGY.com]  
**Sent:** Tuesday, December 30, 2003 7:28 AM  
**To:** Kawakami, Tim  
**Cc:** Brubaker, Holly; Madden, Teresa S; Jeffrey H. Traynham  
**Subject:** RE: Infinite Energy - e' Florida LOI

Attached is the LOI with our redline changes.

-----Original Message-----

**From:** Kawakami, Tim [mailto:tim.kawakami@xcelenergy.com]  
**Sent:** Monday, December 29, 2003 4:31 PM  
**To:** Rich Blaser  
**Cc:** Brubaker, Holly; Madden, Teresa S  
**Subject:** FW: Infinite Energy - e' Florida LOI

Rich, Here is the LOI with changes from our legal group. If everything is acceptable, please call me and I will sign and Fedex the original to you. Thanks

-----Original Message-----

**From:** Robert Montgomery [mailto:rmontgomery@duckerlaw.com]  
**Sent:** Monday, December 29, 2003 1:51 PM  
**To:** Kawakami, Tim  
**Subject:** Re: Infinite Energy - e' Florida LOI

Tim, attached FYR is a redrafted Letter of Intent for the proposed IE – e prime Florida transaction. Notes:

1. I didn't have the Word version of IE's first draft when I started working on this, so I typed it from scratch. While the changes are many, almost all are either rearrangement or elaboration on detail - few or no substantive changes. But I did use IE's language wholesale in several instances.
2. I accelerated the suggested closing date to January 16, so that IE can make the required nominations for its account, for February, as early as the third week of January. No change to the Effective Date (February 1).
3. Apparently here is an outstanding Confidentiality Agreement (CA) between the parties? I reference and use the CA in the LOI. I should probably get a copy of the CA, pls.
4. I have glanced at the Asset Purchase Agmt (APA) submitted by IE, and saw no significant problems, but I haven't reviewed / commented on it in detail. Assuming that the new LOI is OK (or will soon be OK), I suggest instead that IE's attorney take another crack at the APA, in light of the revised LOI - for example, where the APA will be signed simultaneously at the closing table, not in advance of closing, (i) the APA sections regarding pre-closing covenants and conditions to closing can be eliminated, (ii) the section regarding termination pre-closing can be eliminated, and (iii) the purchase price can simply be computed and filled in at the closing table - no need for a NYMEX-based formula in the APA itself. Or I can take the next stab at the APA, but I didn't want to preempt the buyer's drafting prerogative.
5. Assuming that the formula and example are OK with you, I'd attach the Excel spreadsheet example of the NYMEX Adjustment as Exhibit A to the LOI. You and IE could update that example if desired, of course.

I'm in and out this week, around all of next week.